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09/820,582	03/29/2001	Phillip Y. Goldman	14531.97	2866

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EXAMINER

FISH, JAMIESON W

ART UNIT

PAPER NUMBER

2617

DATE MAILED: 07/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/820,582

Applicant(s)

GOLDMAN ET AL.

Examiner

Jamieson W. Fish

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05-04-2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. The title change is accepted.

Response to Arguments

2. Applicant's arguments with respect to claims **1-35** have been considered but are moot in view of the new ground(s) of rejection.

Claim Objections

3. Claim **24** is objected to because of the following informalities: line 17 "slected" should be replaced with "selected." Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims **1-11, 13-35** are rejected under 35 U.S.C. 102(e) as being anticipated by Goode (US 6,718,552).
5. Regarding claim **1**, Goode teaches in a system where a broadcast is output across a medium having a fixed bandwidth to individual home entertainment systems, the broadcast included a plurality of channels of viewable moving image data, a method for optimizing the use of the fixed bandwidth by dynamically restructuring the

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broadcasting of the plurality of channels based on feedback from at least some of the home entertainment systems, the method comprising the steps for: generating viewing behavior information at a first home entertainment system that indicates that a video tuner at the first home entertainment system is tuned to a selected channel from among a plurality of channels of viewable moving image data included in the broadcast output across the fixed bandwidth the medium (See Col. 3 lines 21-67, Col. 4 lines 1-50 Subscriber stations transmit viewer statistics about the number of viewers tuned to a channel slot (selected channel) at a point in time); combining the viewing behavior information from the first home entertainment system with viewing behavior information from other home entertainment systems that corresponds to the selected channel (See Col. 3 lines 21-67, Col. 4 lines 1-50 Channel slots are characterized by viewing statistics); and dynamically restructuring the broadcast of at least the selected channel, by at least restructuring the viewable moving image data and without having to change allocated bandwidth to said selected channel based on the combined viewing behavior information so as to optimize the use of the fixed bandwidth (See Col. 3 lines 21-67, Col. 4 lines 1-50 Channel slots are used to transmit different sets of programming based on the number of viewers currently tuned to the channel slot. This does not change the bandwidth allocated to the channel slot).

6. Regarding claim 2, Goode teaches wherein the combined viewer behavior information is anonymous such that the identities of the first home entertainment system and the other home entertainment systems are not disclosed (See Col. 2 lines 50-67

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The combined user information is represented as a percentages which provides anonymity of viewers).

7. Regarding claim 3, Goode teaches wherein said step for dynamically restructuring a broadcast is performed automatically (See Col. 3 lines 21-67, Col. 4 lines 1-50 Restructuring is performed automatically to user viewer statistics).

8. Regarding claim 4, Goode teaches wherein said step for dynamically restructuring comprises at least one of: modifying bandwidth of the broadcast; changing modulation of the broadcast; changing an encoding scheme of the broadcast; varying parameters of the encoding scheme of the broadcast; interrupting the broadcast by allocating no bandwidth to the channel so as to entirely shut off the channel; redistributing the channel from a first transponder of a satellite television system to a second transponder of the satellite television system; and reserving a guaranteed amount of bandwidth for the broadcast (See Col. 3 lines 21-67, Col. 4 lines 1-50 Moving a set of programs to a channel slot having a predefined bandwidth guarantees an amount of bandwidth for the program channels). The USPTO considers the applicants "at least one of" language to be anticipated by any reference containing any of the subsequent corresponding elements.

9. Regarding claim 5, Goode teaches the method further comprising the step for transmitting the viewing behavior information as feedback across a back channel from the first home entertainment system to a signal source, wherein the viewing behavior information is transmitted in one of real time (See Col. 4 lines 12-32, Col. 5 lines 36-42) and a deferred basis with respect to the broadcast of the channel. The USPTO

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considers the applicants "in one of" language to be anticipated by any reference containing any of the subsequent corresponding elements.

10. Regarding claim 6, Goode teaches wherein a statistical analysis is performed at the signal source to determine when a statistically significant number of home entertainment systems have transmitted viewing behavior information (See Col. 3 lines 21-67, Col. 4 lines 1-50 Channel restructuring is based on the percentage of users watching tuned to a channel slot).

11. Regarding claim 7, Goode teaches the method further comprising the step for transmitting the viewing behavior information as feedback across a back channel from the first home entertainment system to a clearinghouse system (See Fig. 2, SCM 212, Col. 5 lines 28-46 User information goes to SCM which is a clearinghouse system), wherein the viewing information is transmitted in at least one of (i) real time with respect to the broadcast of the channel (See Col. 4 lines 12-32) and (ii) on a deferred basis with respect to the broadcast of the channel. The USPTO considers the applicants "at least one of" language to be anticipated by any reference containing any of the subsequent corresponding elements.

12. Regarding claim 8, Goode teaches wherein the clearinghouse system performs said step for combining (See Col. 5 lines 28-57 SCM collects information from various user stations).

13. Regarding claim 9, Goode teaches wherein a statistical analysis is performed at the clearinghouse system to determine when a statistically significant number of home

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entertainment systems have transmitted viewing behavior information (See Col. 5 lines 28-46 SCM manages information this would include statistical analysis).

14. Regarding claim **10**, Goode teaches wherein the clearinghouse system processes the combined viewing behavior information and forwards the results to a signal source (See Col. 5 lines 39-43).

15. Regarding claim **11**, Goode teaches wherein the processing performed at the clearinghouse system comprises associating the combined viewing behavior information with data from a data source (See Col. 5 lines 28-46 Viewing behavior is associated with programs).

16. Regarding claim **13**, Goode teaches wherein the processing performed at the clearinghouse system comprises generating a profile of at least one of the home entertainment systems and the users (See Col. 5 lines 28-46).

17. Regarding claim **14**, Goode teaches wherein the profile includes the programs of the broadcast to which the home entertainment systems are more frequently tuned compared to other programs of the broadcast (See Col. 5 lines 28-46).

18. Regarding claim **15**, Goode teaches the method further comprising allocating increased bandwidth to the programs more frequently tuned (See Col. 3 lines 6-15, Col. 4 lines 12-50 Program sets more frequently tuned are assigned broadcast channel slots which require more bandwidth than narrowcast channel slots).

19. Regarding claim **16**, Goode teaches wherein the bandwidth is increased at an instant in time prior to the airing of the programs more frequently tuned (See Col. 6 lines 46-53).

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20. Regarding claim 17, Goode teaches a method further comprising allocating increased bandwidth to channels of the broadcast to which the home entertainment systems are more frequently tuned (See Col. 3 lines 6-15, Col. 4 lines 12-50).

21. Regarding claim 18, Goode teaches in a system where a broadcast is output across a medium having a fixed bandwidth and is received by one or more individual home entertainment systems, the broadcast including a plurality of channels of viewable moving image data, a method for restructuring the broadcast based on feedback transmitted from the one or more home entertainment systems across one or more potentially unreliable back channels to a clearinghouse system, the method comprising the acts of: receiving at the clearinghouse system viewing behavior information across a first communication link from a first home entertainment system, wherein the viewing behavior information indicates that a video tuner of the first home entertainment system is tuned to a selected channel from among a plurality of channels of viewable moving image data broadcast across the fixed bandwidth medium (See Fig. 2, SCM 212, Col. 5 lines 28-46, See Col. 3 lines 21-67, Col. 4 lines 1-50); receiving at the clearinghouse system other viewing behavior information across other communication links from other home entertainment systems, wherein the other viewing behavior information indicates that the video tuners at the other home entertainment systems are tuned to the selected channel (See Fig. 2, SCM 212, Col. 5 lines 28-46, See Col. 3 lines 21-67, Col. 4 lines 1-50); combining at the clearinghouse system the viewing behavior information from the first home entertainment system with the other viewing behavior information from the other home entertainment systems (See Fig. 2, SCM 212, Col. 5 lines 28-46, See Col. 3

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lines 21-67, Col. 4 lines 1-50); and automatically restructuring the broadcast of at least the selected channel by at least restructuring the viewable moving image data, and without having to change allocated bandwidth to said selected channel, based on the combined viewing behavior information (See Col. 3 lines 21-67, Col. 4 lines 1-50 Restructuring is performed automatically to user).

22. Regarding claim **19**, Goode teaches wherein the first communication link and the other communication links are each back channels (See Col. 4 lines 2-10).

23. Regarding claim **20**, Goode teaches a method further comprising the act of statistically determining at the clearinghouse system the reliability of the combined viewing behavior information, wherein said act of automatically restructuring a broadcast is based on the statistical determination performed at the clearinghouse system (See Col. 3 lines 21-67, Col. 4 lines 1-50 Channel restructuring is based on the percentage of users watching tuned to a channel slot).

24. Regarding claim **21**, Goode teaches wherein the statistical determination performed at the clearinghouse system comprises determining when a statistically significant amount of viewing behavior information has been received to cause the broadcast to be automatically restructured (See Col. 3 lines 21-67, Col. 4 lines 1-50 Channel restructuring is based on the percentage of users watching tuned to a channel slot).

25. Regarding claim **22**, Goode teaches wherein said act of automatically restructuring a broadcast comprises at least one of: modifying bandwidth of the broadcast; changing modulation of the broadcast; changing an encoding scheme of the

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broadcast; varying parameters of the encoding scheme of the broadcast; interrupting the broadcast by allocating no bandwidth to the channel so as to entirely shut off the channel; redistributing the channel from a first transponder of a satellite television system to a second transponder of the satellite television system; and reserving a guaranteed amount of bandwidth for the broadcast (See Col. 3 lines 21-67, Col. 4 lines 1-50 Moving a set of programs to a channel slot having a predefined bandwidth guarantees an amount of bandwidth for the program channels). The USPTO considers the applicants "at least one of" language to be anticipated by any reference containing any of the subsequent corresponding elements.

26. Regarding claim **23**, Goode teaches wherein said act of automatically restructuring a broadcast comprises allocating varying amounts of bandwidth of an MPEG data stream to the channel (See Col. 4 lines 46-50, Col. 6 lines 10-53 Various MPEG program sets are assigned to channel slots. Since different MPEG program sets having varying amounts of bandwidth, this is varying amounts of bandwidth of an MPEG data stream).

27. Regarding claim **24**, Goode teaches in a system where a broadcast is provided from a signal source across a medium having a fixed bandwidth and is received by one or more individual home entertainment systems, the broadcast including a plurality of channels having viewable moving image data, a method for optimizing the bandwidth by restructuring the broadcasting of one or more channels within the broadcast based on feedback transmitted from the one or more home entertainment systems to the signal source across one or more back channels, the method comprising the acts of:

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transmitting a broadcast from a signal source to one or more home entertainment systems (See Col. 3 lines 21-67, Col. 4 lines 1-50); receiving at the signal source viewing behavior information across a first back channel from a first home entertainment system, wherein the user behavior information indicates that a tuner of the first home entertainment system tuned to a selected channel from among the plurality of channels of viewable moving image data of the broadcast, and wherein the first home entertainment system is one of the one or more home entertainment systems (See Col. 3 lines 21-67, Col. 4 lines 1-50); receiving at the signal source other viewing behavior information across other back channels from other home entertainment systems, wherein the other user behavior information indicates that tuners at the other home entertainment systems tuned to the selected channel, and wherein the other home entertainment systems are of the one or more home entertainment systems (See Col. 3 lines 21-67, Col. 4 lines 1-50); combining the viewing behavior information from the first home entertainment system with the other viewing behavior information from the other home entertainment systems (See Col. 3 lines 21-67, Col. 4 lines 1-50); and automatically restructuring a broadcast of the selected channel, by at least restructuring the viewable moving image data, and without having to change the allocated bandwidth to said selected channel based on the combined viewing behavior information (See Col. 3 lines 21-67, Col. 4 lines 1-50). Channel slots are used to transmit different sets of programming based on the number of viewers currently tuned to the channel slot).

28. Regarding claim 25, Goode teaches wherein the viewing behavior information is received in real time across the first communication link with respect to a program

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broadcast on the channel (See Col. 3 lines 21-67, Col. 4 lines 1-50 Viewership statistics are calculated as program is being broadcast).

29. Regarding claim **26**, Goode teaches wherein the viewing behavior information is received on a deferred basis across the first communication link with respect to a program broadcast on the channel (See Col. 3 lines 21-67, Col. 4 lines 1-50 There is an inherent delay between when viewing behavior is transmitted from when it is received).

30. Regarding claims **27-28**, claims 27-28 relate to a computer program product comprising a computer readable medium carrying computer program code means utilized to implementing the methods of claims **18-19**, respectively. Thus, claims **27-28** are evaluated and rejected with respect to claims **18-19**.

31. Regarding claim **29**, Goode teaches wherein the viewer behavior information is received in real time with respect to a program broadcast on the channel (See Col. 3 lines 21-67, Col. 4 lines 1-65 Viewership statistics are calculated as program is being broadcast).

32. Regarding claim **30**, Goode teaches wherein the viewer behavior information is received on a deferred basis with respect to a program broadcast on the channel (See Col. 3 lines 21-67, Col. 4 lines 1-50 There is an inherent delay between when viewing behavior is transmitted from when it is received).

33. Regarding claim **31**, Goode teaches in a system that provides a broadcast across a medium having a fixed bandwidth to individual home entertainment system, the broadcast including one or more channels of viewable moving image data, a method for improving the broadcast based at least in part by feedback received from one or

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more of the home entertainment systems, the method comprising the acts of: receiving a broadcast at a local signal source, wherein the broadcast is sent from a central signal source (See Col. 5 lines 5-27 Headend (local signal source) receives video from video source (central source)); transmitting the broadcast to one or more home entertainment systems (See Col. 3 lines 21-67, Col. 4 lines 1-50); receiving at the local signal source viewing behavior information from at least one of the one or more home entertainment systems, wherein the viewing behavior information is received across a back channel, the received viewing behavior indicating that tuners at the one or more home entertainment systems are tuned to a selected channel from among the one or more channels of viewable moving image data (See Col. 3 lines 21-67, Col. 4 lines 1-50); and transmitting a dynamically restructured broadcast to the one or more home entertainment systems, wherein the restructured broadcast is restructured by at least the restructuring the viewable moving image data, without having to change allocated bandwidth to said selected channel, and is restructured based at least in part on the viewing behavior information received (See Col. 3 lines 21-67, Col. 4 lines 1-50 Channel slots are used to transmit different sets of programming based on the number of viewers currently tuned to the channel slot).

34. Regarding claim **32**, Goode teaches wherein the broadcast is dynamically restructured at the local signal source (See Col. 4 lines 28-32).

35. Regarding claim **33**, Goode teaches wherein the dynamic restructuring of the broadcast comprises at least one of: modifying bandwidth of the broadcast; changing modulation of the broadcast; changing an encoding scheme of the broadcast; varying

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parameters of the encoding scheme of the broadcast; redistributing a channel from a first transponder of a satellite television system to a second transponder of the satellite television system; and reserving a guaranteed amount of bandwidth for the broadcast (See Col. 3 lines 21-67, Col. 4 lines 1-50 Moving a set of programs to a channel slot having a predefined bandwidth guarantees an amount of bandwidth for the program channels). The USPTO considers the applicants "at least one of" language to be anticipated by any reference containing any of the subsequent corresponding elements.

36. Regarding claim **34**, Goode teaches the method further comprising the acts of: transmitting the viewing behavior information to one of the central signal source and a clearinghouse system (See Fig. 2, SCM 212, Col. 5 lines 28-46 User information goes to SCM which is a clearinghouse system); wherein said act of transmitting the viewing behavior information is performed before said act of transmitting a dynamically restructured broadcast (See Col. 3 lines 21-67, Col. 4 lines 1-50); and receiving the dynamically restructured broadcast (See Col. 3 lines 21-67, Col. 4 lines 1-50).

37. Regarding claim **35**, Goode teaches wherein the broadcast was dynamically restructured by at least one of: a modification in bandwidth allocation; a change in the modulation of the broadcast; a change in an encoding scheme of the broadcast; a modification in a parameter of the encoding scheme of the broadcast; a redistribution of a channel from a first transponder of a satellite television system to a second transponder of the satellite television system; and a reservation of a guaranteed amount of bandwidth for the broadcast (See Col. 3 lines 21-67, Col. 4 lines 1-50 Moving a set of programs to a channel slot having a predefined bandwidth guarantees an amount of

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bandwidth for the program channels). The USPTO considers the applicants "at least one of" language to be anticipated by any reference containing any of the subsequent corresponding elements.

Claim Rejections - 35 USC § 103

38. Claim **12** is rejected under 35 U.S.C. 103(a) as being unpatentable over Goode.

39. Regarding claim **12**, Goode fails to disclose wherein the data source comprises an electronic programming guide that provides data as to at least one of a program and an advertisement. However, Goode does teach where MPEG-2 System information is used in his invention (See Col. 6 lines 14-16). Using system information is one way to assemble an electronic program guide. Official notice is taken that electronic programming guides that provide data as to at least one of program and an advertisement are notoriously well known in the art as an effective way to organize broadcast information. Thus, it would have been obvious at the time the invention was made to modify Goode to have the data source comprise an electronic programming guide that provided data as to at least one of a program and an advertisement.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jamieson W. Fish whose telephone number is 571-272-7307. The examiner can normally be reached on Monday-Friday, 8:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's primary, Ngoc Vu can be reached on 571-272-7320. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JF 7/14/2005


NGOC-YEN VU
PRIMARY EXAMINER